

RECEIVED
FEDERAL ELECTION
COMMISSION

UTRECHT & PHILLIPS, PLLC
2011 FEB -2 AM 11:13 ATTORNEYS AT LAW
1900 M Street, N.W.
Suite 500
OFFICE OF GENERAL COUNSEL Washington, D.C. 20036

(202) 778-4000
Facsimile (202) 842-5825

February 1, 2011

RECEIVED
2011 FEB -1 PM 3:34
FEC MAIL CENTER

Christopher Hughey, Acting General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, NW, 6th Floor
Washington, DC 20463

Re: MUR 6445, Hillary Clinton for President and Shelly Moskwa, as Treasurer

Dear Mr. Hughey:

This is the response of our clients, Hillary Clinton for President and Shelly Moskwa, as Treasurer (collectively, the "Committee" or "Respondents") to the complaint filed in Matter Under Review ("MUR") 6445. In short, this complaint, via supplemental filing, admits that the allegation therein has no merit and should be dismissed, and accordingly, wholly fails to recite any facts that would constitute a violation of the law.

In summary, the Complaint alleges that a contribution received by the Committee from "well-known actor and comedian" Eddie Izzard was made in violation of 2 U.S.C. 441e, the prohibition on contributions by foreign nationals in the Federal Election Campaign Act of 1971, as amended. However, by supplemental filing, complainant concedes that the public record as it existed prior to the filing of the complaint, appears to indicate that Mr. Izzard is a green card holder and a legally eligible contributor under the law. Consequently, complainant seeks the withdrawal and/or dismissal of its complaint. Clearly, in seeking withdrawal and/or dismissal of the complaint, complainant recognizes that this complaint fails, in both form and substance, to describe any potential violations by Respondents.

1. The Complaint Should Be Dismissed Because It Does Not Meet The Minimum Requirements For A Complaint Under The FEC Regulations

Under the Act and Commission regulations, a complaint, to be sufficient, valid and appropriate for filing and consideration by the Commission, must conform to certain provisions set forth at 11 C.F.R. 111.4(d). Included in these minimum provisions are the following requirements:

- (3) The complaint should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

11044291920

(4) The complaint should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

The original complaint herein merely speculates, based on selective biographical information, that Mr. Izzard did not possess a green card. Beyond the minimal speculation and faulty research, no proof or actual information is provided. Within four days of filing, complainant supplemented its own filing with information sufficient to rebut the original speculative allegations. *See Supplemental Complaint, December 20, 2010, pages 1-2.*

Merely swearing to speculative and unsubstantiated words not supported by facts or personal knowledge should not give rise to Commission consideration of a matter under review, particularly when information contrary to the allegation is provided by complainant itself.

The Complaint simply makes an erroneous assumption without merit, based wholly on irrelevant information, and without doing even the most basic review of the applicable legal standards, in order to allege that the Committee engaged in prohibited activity. The Commission should see this complaint for the nuisance that it is, and dismiss it forthwith.

Z. Respondents Had No Reason to Believe that the Contribution at Issue Is Impermissible.

Pursuant to 11 CFR 110.20(g), no person shall knowingly solicit, accept or receive a contribution from a foreign national. The term "knowingly" means: "...that a person must: (i) have actual knowledge that the source of the funds solicited, accepted or received is a foreign national; (ii) be aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or (iii) be aware of facts that would lead a reasonable person to inquire whether the source of the funds solicited, accepted or received is a foreign national, but the person failed to conduct a reasonable inquiry." 11 CFR 110.20(a)(4). Further, pursuant to 11 CFR 110.20(a)(5), "pertinent facts include, but are not limited to: (i) the contributor or donor uses a foreign passport or passport number for identification purposes; (ii) the contributor or donor provides a foreign address; (iii) the contributor or donor makes a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or (iv) the contributor or donor resides abroad."

None of the conditions cited above are present here. The Committee did not have information or knowledge to suggest that Mr. Izzard's contribution was made by a foreign national, was not aware of any facts indicating a probability that the contribution was from a foreign national, or any facts that would prompt an inquiry. Specifically, there was no foreign identification used to make the contribution, the address provided was a U.S. not a foreign address, and the contribution was not made by foreign check.

As the complaint notes, Mr. Izzard made a contribution of \$2,300 to the Committee on October 7, 2008. This contribution was made via means of personal credit card on the donation page of the Committee's website. This donation page contained the appropriate affirmation or warning stating "I am not a foreign national who lacks permanent residence status in the United States." *See Exhibit A.* All contributors were required to check a box confirming the truth and accuracy of that statement, and should the contributor have failed to check this box, the

11044291921

Committee's contribution processing system would not have processed the contribution, and the transaction would not have gone through. *See Exhibit B.*

Upon information and belief, and to the best of the Committee's knowledge, based on the above-described operational aspects of its contribution processing system, Mr. Izzard checked the affirmation box attesting that he was not a foreign national who lacked permanent resident status, i.e., he was a green card holder. *Id.* Nothing in the records pertaining to this contribution or the making thereof gave the Committee reason to believe that Mr. Izzard was a foreign national. The address that he provided was located within the United States.¹

Finally, the public record, as provided by complainant, indicates that Mr. Izzard is a green card holder, and therefore, legally eligible to contribute to the Committee. Nothing that the Committee has seen in the public record or in connection with this particular contribution would alter that conclusion.² The Committee was aware of no facts that would have prompted an inquiry.³

In sum, the Complaint is based on pure speculation and the documents attached to it do not support a single violation of the Act. For this reason, the Commission should dismiss it immediately. Accordingly, Respondents respectfully request that the Commission find no reason to believe that any violation of the Federal Election Campaign Act of 1971 (the "Act"), as amended, or the Commission regulations has occurred and close this MUR as expeditiously as possible.

Respectfully submitted,



Eric Kleinfeld
Lyn Utrecht

¹ Complainant suggests that the use of a business address is "bogus," *See Complaint, page 2.* Contrary to that assertion, it is common practice for contributors provide business addresses when contributing by means of a website and in the absence of a check pre-printed with a home address.

² There is certainly no information to suggest that the Committee had any actual knowledge that Mr. Izzard might not be a green card holder.

³ The Committee had in place a compliance process that did, on occasion prompt inquiries as to the permissibility of contributions when certain facts were available, such as foreign addresses or foreign bank accounts, and in those cases, the Committee obtained sufficient information to demonstrate that such contributions were permissible. *See Exhibit B.*

11044291922

11044291923

EXHIBIT A

MUR 6445, Hillary Clinton for President and Shelly Moskwa, as Treasurer

11044291924

[Click here to contribute by mail](#)

[Click here if you are an American living abroad](#)

CONTACT INFORMATION

First Name:

Last Name:

Address:

City:

State:

Zip:

Phone:

Email:

SELECT CONTRIBUTION AMOUNT

☐ \$10 ☐ \$50 ☐ \$250 ☐ \$1000 ☐ \$2300

☐ \$25 ☐ \$100 ☐ \$500 ☐ \$1800 ☐ Other \$

CREDIT CARD INFORMATION

Card Number:

Expiration:

Security Code:

(what's this?)

CONFIRM YOUR ELIGIBILITY

☒ By checking this box, I confirm that the following statements are true and accurate:

1. I designate this contribution for 2008 primary election debt retirement.
2. This contribution is made from my own funds, and not those of another.
3. This contribution is not made from the general treasury funds of a corporation, labor organization or national bank.
4. I am not a Federal government contractor.
5. I am not a foreign national who holds permanent resident status in the United States.
6. I am at least 18 years of age.
7. This contribution is made on a personal credit or debit card for which I have the legal obligation to pay, and is made neither on a corporate or business entity card nor on the card of another.
8. I am not a registered foreign agent.

SUBMIT

Having a problem with your contribution? [Contact Us](#)

Your contribution is not tax-deductible for federal income tax purposes. An individual may contribute a maximum of \$2,300. By submitting your contribution, you agree that your contribution is designated for the 2008 primary election debt retirement, when aggregated with all of the individuals other 2008 primary contributions. Corporations and individuals are strictly prohibited from reimbursing another person for making a contribution to Hillary Clinton for President. To comply with Federal law, we must use best efforts to obtain, maintain, and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in an election cycle.

Paid for by Hillary Clinton for President

11044291925

EXHIBIT B

MUR 6445, Hillary Clinton for President and Shelly Moskwa, as Treasurer